

No. 15923

IN THE

# United States Court of Appeals

FOR THE NINTH CIRCUIT

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C. H. TROWLER, doing business as Standard Maps,  
*Appellant,*

*vs.*

FRED W. AUSTIN, WILLIAM R. BLUMFIELD and HAROLD  
W. SIEDE, co-partners doing business as Industrial  
Lithographers,

*Appellees.*

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## APPELLEES' BRIEF.

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## APPELLEES' BRIEF.

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### Statement of Pleadings and Facts re Jurisdiction.

PLEADINGS: (1) First Amended Complaint [R. 23-27]; Answer thereto [R. 34-37]; Affidavit of Charles H. Trowler [R. 39-42]; Motion of Appellees Austin, Blumfield and Siede for summary judgment [R. 57-75]; Findings, Conclusions and Judgment [R. 81-83].

JURISDICTION: The appellees in this action have never conceded (albeit we realize federal jurisdiction can be neither conceded or stipulated if it does not exist) the jurisdiction of the District Court [R. 37, Separate Defense; R. 59-75, proceedings in Municipal Court]. However, since the cause below was decided entirely upon the question of the insufficiency of plaintiff's affidavit [R. 39-42], as to what he did in preparing the claimed copyrighted

maps, to entitle them to copyright, we do not here discuss the other questions relative to jurisdiction—they are affirmatively raised and require evidence. Insofar as the narrow issue on this appeal is concerned, Title 28, U. S. C., Sec. 1338(b), applies.

### Statement of the Case.

We controvert only the generality of appellant's statement, and point specifically to the particular map involved herein (Case 179-57 HW) since such map is the one which depicts the Antelope Valley Area only—*not Hesperia* (App. Br. p. 4, footnote). It is obvious that these elements supplied to the Hesperia map by the plaintiff from his own observation [R. 41]:

“Location of Old Historical Hotel—Source: My personal observation; Golf Course—Source: my personal observation; Chamber of Commerce Building—Source: My personal observation; Community Hall—Source: My personal observation; Fire Station—Source: My personal observation; Proposed Hotel Site—Source: My personal observation,”

since they are all located on the Hesperia map, cannot have been (and are not) upon the Antelope Valley map as a result of the plaintiff's personal observation—or at all. Hence a basic distinction exists, pragmatically, between the two maps, and the plaintiff's averment that “In preparing my map of Antelope Valley I followed substantially the same procedure as that set forth above with respect to my map of Hesperia” must include only those elements in the work of compilation *not* referring to specific points *within* Hesperia.

## ARGUMENT.

### Plaintiff's Affidavit Insofar as It Pertains to the Antelope Valley Map Shows on Its Face Such Lack of Originality as to Defeat Its Copyrightability.

Eliminating, as we must, all discussion of elements and items on the Antelope Valley Map which have plaintiff's personal observation as their source, since there are none shown in plaintiff's affidavit [R. 39-42], we find that the following, stripped of verbiage, is all that the plaintiff did in preparing the Antelope Valley map:

(1) He purchased maps issued by various public authorities (Recorded Tract Sheets, Department of Interior Maps, California State Highway Division Maps). All the other sources [R. 39-40] apply specifically to the Hesperia area. "None of these maps contained any copyright notice" [R. 40].

(2) He joined them all together and "allowed for varying scales on different sheets" [R. 40].

(3) He made a free-hand drawing copy of the assembled sheets all to a uniform scale.

(4) He included streets as set forth in the tract sheets; he excluded lot numbers, lot measurements, lot lines, easements, pipelines, curbs, and repetitions of street names.

(5) As to the Antelope Valley map, since his procedure was "substantially the same" [R. 42], we assume for argument without admitting, that he added only: (a) Main Highway, (b) "Bear Valley Road" (if it appears on the Antelope Valley map), (c) Mojave River (if it also so appears) and that his source was the County Road System Map [R. 41], (d) he inserted Railroad Tracks, "Proper" Altitudes, and Certain Roads from the A. T. & S. F. Railroad Map [R. 41], and (e) "Certain Roads" from a Fed-

eral Government map [R. 41]. That is all, *at most*. He cannot have “evolved” section numbers from Townships and Ranges from the two San Bernardino County Maps [R. 41], since Antelope Valley is in Los Angeles County [R. 41]. This also, of course, applies to the listed “Lake—Source: San Bernardino County Maps” [R. 41]. And as previously mentioned, all personal observations noted were made only in Hesperia—for that map alone. Hence then the Antelope Valley map from plaintiff’s own affidavit, falls short, not only of sufficient originality to qualify for copyright, but of *any* originality.

A case much in point is *Marken and Bielfield, Inc. v. The Baughman Co.*, E. D. Va., June 17/57.\*

There the Court said:

“As I view the evidence, Captain Gill prepared his base map from material collected by others, with such omissions as he saw fit to serve the purpose desired. The reduction in size by the use of a mechanical instrument is not an original idea. The omission of towns, highways or other markings superfluous for his purposes is not an indication of originality. The free hand location of highways between points does not constitute new information but merely the act of a draftsman in delineating such highways in a method suitable for his purpose. The record discloses no effort on his part to verify the correctness of the maps by communicating with individuals or local agencies in the area affected. \* \* \* It is conceded that Captain Gill made no personal inspection of any of the areas shown on the map. As indicated, the only

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\*We obtained the opinion in this case (by Hon. Sterling Hutcheson, J.) from the Court, E. D. Va., but have been unable to locate any citation in the Fed. Supp. We will further check and advise the Court of our findings as soon as possible.



significant change made by Captain Gill consisted of an adjustment of areas around Roanoke and Williamsburg \* \* \* in order that those cities might be shown. Apparently this adjustment consisted only of a contraction or restriction of the portion of the outer edge of the map so as to bring into the picture these cities."

This follows the view of the authorities, and specifically the general rule that, to be copyrightable, a work must contain originality.

*General Drafting Co. v. Andrews*, 37 F. 2d 54;

*Andrews v. Guenther Pub. Co.*, 60 F. 2d 555;

*Freedman v. Milnag Leasing Corp.*, 20 Fed. Supp. 802;

*Crocker v. General Drafting Co.*, 50 Fed. Supp. 634;

*Christianson v. West Pub. Co.*, 53 Fed. Supp. 454;  
Aff'd. 149 F. 2d 202;

*Amsterdam v. Triangle Publications*, 189 F. 2d 104.

### Conclusion.

On the facts in plaintiff's affidavit and on the principles of law which to us seem well established, we respectfully submit that the judgment in this case should be affirmed.

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